(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

DATE: OCT 0 6 2014 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: PETITIONER: [redacted]
BENEFICIARY:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition on January 15, 2014. The petitioner appealed the decision to the Administrative Appeals Office (AAO) on February 13, 2014. The appeal will be dismissed.

According to the petition and the accompanying documents, filed on August 26, 2013, the petitioner seeks to classify the beneficiary as an alien of extraordinary ability in the sciences, as a geophysicist, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner has not established the beneficiary's sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section § 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that the petitioner, as initial evidence, can present evidence of the beneficiary's one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i)-(x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the beneficiary's basic eligibility requirements.

On appeal, the petitioner files additional supporting documents, including a December article, a and the beneficiary's 2013 Internal Revenue Service (IRS) Form W-2 Wage and Tax Statement. The petitioner asserts that it has submitted evidence that meets the criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(ii), (iv), (v), (vi), (viii) and (ix). For the reasons discussed below, the petitioner has not established the beneficiary's eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence under at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that the beneficiary is one of the small percentage who are at the very top in the field of endeavor, and that the beneficiary has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

I. THE LAW

Section 203(b) of the Act states, in pertinent part, that:

1. Priority workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

   (A) Aliens with extraordinary ability. – An alien is described in this subparagraph if –

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

United States Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the beneficiary's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through initial evidence of a one-time achievement, that is a major, internationally recognized award, or through the submission of qualifying evidence under at least three of the ten categories of evidence listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld our decision to deny the petition, the court took issue with our evaluation of the evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Kazarian*, 596 F.3d at 1121-22.

The court stated that our evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this case, the petitioner has not satisfied

[1] Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

the antecedent regulatory requirement of presenting at least three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has not demonstrated that the beneficiary is one of the small percentage who are at the very top in the field of endeavor, or that the beneficiary has achieved sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3).

II. ANALYSIS

A. O-1 Nonimmigrant Visa

USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the beneficiary. A prior approval of nonimmigrant visa petition does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. United States Dep't of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc.*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, No. 03-1083299, 99 F. App'x 556, 2004 WL 1240482 at *1 (5th Cir. Jun. 2, 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS is not required to treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at *3 (E.D. La. Mar. 15, 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

B. Evidentiary Criteria[2]

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of the beneficiary's one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through its evidence that the beneficiary is the recipient of a major, internationally recognized award at a level similar to that of the Nobel

[2] The petitioner does not claim that it meets the regulatory categories of evidence not discussed in this decision.

Prize. As such, as initial evidence, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The director concluded that the petitioner did not meet this criterion. On appeal, the petitioner asserts that it meets this criterion because the beneficiary is "an active member in good standing of the " The petitioner asserts that "the is exclusive and requires a level of achievement of all of its members, and that the members are selected by professionals in the field who themselves have outstanding credentials." The petitioner has not met this criterion.

First, the petitioner's membership in the does not constitute his membership in a qualifying association. According to the Bylaws of the

According to a September 13, 2012 letter from Member Services, "Active membership consists of those actively engaged in practicing or teaching geophysics or a related scientific field." The petitioner has not shown that the requires "outstanding achievements of [its] members, as judged by recognized national or international experts." Rather, according to the bylaws,

In addition, although the bylaws indicate that the beneficiary must provide a list of references who can confirm the beneficiary's qualification and that a majority of the Board of Directors must approve the application, neither the bylaws nor Ms. letter state that the requires outstanding achievements from its active members, "as judged by recognized national or international experts," as required under the criterion. Specifically, the petitioner has not provided sufficient evidence showing that members of the Board of Directors are "recognized national or international experts in their disciplines or fields."

Second, even if the petitioner had demonstrated that the beneficiary's active membership in the is qualifying under this criterion, which it has not, it has not shown that he is a member of a second qualifying association. The plain language of the criterion requires evidence of membership in associations, in the plural, which require outstanding achievements of their (in the plural) members. *See* 8 C.F.R. § 204.5(h)(3)(ii). The petitioner's position on appeal that it need not show that the beneficiary is a member of at least two qualifying associations is not supported by the plain language of the criterion. In addition, the requirement that the beneficiary be a member of at least two qualifying associations is consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act.

Accordingly, the petitioner has not presented documentation of the beneficiary's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ii).

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

The director concluded that the petitioner met this criterion. The evidence in the record does not support the director's conclusion. We may deny an application or petition that does not comply with the technical requirements of the law even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

The petitioner has submitted an undated letter from Dr. stating that throughout 2004 and 2005, the beneficiary was "seconded into and conducted research within department of an organization supporting education and research at the Brazil." During this period, the beneficiary was involved in work programs. He "sat on the panel that would judge each students [sic] technical merit[,] select[] the top 3 post graduates to continue the research within reservoirs, and offer[] the student positions within the organization." The petitioner has submitted a copy of the beneficiary's curriculum vitae that does not indicate that during 2004 and 2005, the beneficiary was involved with the or its work programs, either as a researcher or a judge of post graduates. The beneficiary's curriculum vitae lacks information relating to the beneficiary ever having served as a judge. The petitioner has provided inconsistent documents and "it is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], absent competent objective evidence pointing to where the truth, in fact, lies, will not

suffice." *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has provided no such evidence to explain or reconcile the inconsistent evidence.

Accordingly, the petitioner has not presented probative, relevant and credible evidence of the beneficiary's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iv).

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The director concluded that the petitioner did not meet this criterion. The petitioner asserts that the beneficiary meets this criterion based on reference letters in the record that discuss the beneficiary's work. The reference letters provide information relating to the value of the beneficiary's work in the field and to the beneficiary's past and current employers. We have reviewed the contents of all the reference letters, and considered them according to the relevant information they provide. The petitioner has not submitted sufficient evidence that meets this criterion.

First, evidence that the beneficiary's work has added to the pool of general knowledge is not sufficient to show that the petitioner meets this criterion. For example, according to Dr. [redacted] "major international oil and gas companies" have used the beneficiary's work on the [redacted] "as reference documents." According to Andrew White, a subsurface manager for [redacted] in Scotland, the beneficiary's work for [redacted] "helped drive step change in understanding of the producing hydrocarbon field within the study are[a] [in the [redacted]" According to Dr. [redacted] the beneficiary's work has "brought a deeper understanding to the scientific community." While these letters establish that the beneficiary's work has value, any research must be original and likely to present some benefit if it is to receive attention from the scientific community. The evidence in the record demonstrates that the beneficiary has performed original research that added to the general pool of knowledge. Not every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole. In this case, the petitioner has not submitted sufficient evidence showing the beneficiary's work constitutes contributions of major significance in the field.

Second, speculation and prediction that the beneficiary's research work might in the future have an impact in the field is insufficient to show that the petitioner meets this criterion. According to [redacted] the beneficiary's work relating to shale reservoirs "has not been published in industry or academic journals," but "[t]hese ideas will be a major turning point for development of shale reservoirs and securing an energy source for the future of the United States." Mr. [redacted] further states that the beneficiary's work on the [redacted] formation in Pennsylvania "has not yet been published in [the] industry and will have a massive impact on Marcellus production." Similarly, according to [redacted] Geological Advisor, [redacted] the beneficiary's "current research

and original new scientific methods in quantifying shale gas reserves will help the industry to improve production significantly." These reference letters are insufficient to show that the beneficiary has already made qualifying contributions. Rather, they opine that the beneficiary's research might in the future impact the field.

Third, evidence that the beneficiary has been an asset to his former or current employer is not sufficient to show that the beneficiary has made contributions of major significance in the field. According to Mr. the beneficiary's work resulted "in an additional $75 mm of value to and an additional 15 million barrels of oil equivalent of reserves." Mr. further states that the beneficiary used a new dataset "to target two new subsea development wells which accessed 15 mmboe [million barrels of oil equivalent] of reserves and added $100 mm of value to " Dr. states that the beneficiary's work "aided the commercialization of hydrocarbon discoveries" and "formed the basis for a substantial bid for the concession of $1.2 billion." Even assuming the beneficiary has, through his work, increased the value and productivity of his employers, without evidence that his work has also impacted the field as a whole, the petitioner has not shown that the beneficiary has made contributions of major significance in the field, as required under the criterion. The materials that the petitioner submitted from the Department of Labor's Occupational Outlook Handbook indicate that it is inherent to the beneficiary's occupation to "analyze aerial photographs, well logs . . . and other data to locate natural resource deposits and estimate their size." These materials further state that petroleum geologists "search for oil and gas deposits that are suitable for commercial extraction." Simply performing the inherent duties of the occupation for the benefit of one's employer is not, without a wider influence in the field, a contribution of major significance in the field. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia v. Beers*, __ F. Supp. 2d __, 2013 WL 6571822, at *6 (D.D.C. Dec. 16, 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

Fourth, conclusory statements from references are insufficient to show that the petitioner meets this criterion. According to Dr. the beneficiary's " has been "heavily cited." Dr. does not provide any additional information relating to how many times the paper has been cited, or who has cited the paper. The record includes a document from the referencing the in Brazil, but it does not specifically reference or cite the beneficiary's paper. Similarly, a pgs.com printout makes reference to a , but does not reference or cite the beneficiary's paper. In addition, Mr. states that the beneficiary "has co-authored a number of technical papers," but only lists one paper on the as an example. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, 17 (D.C. Dist. 1990).

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board has also held, however, "[w]e not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Vague, solicited letters from colleagues or associates that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d, 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d at 1115.[3] The opinions of experts in the field are not without weight and have been considered. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Matter of Caron Int'l*, 19 I&N Dec. at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); *Visinscaia*, 2013 WL 6571822, at *6 (concluding that our decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious).

While the reference letters confirm that the beneficiary's work is original, contributes to the pool of knowledge in the field and has benefited his former and current employers, the letters do not establish that his impact in the field has risen to a level consistent with a contribution of major significance.

Accordingly, the petitioner has not presented evidence of the beneficiary's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field of mechanical engineering. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The director concluded that the petitioner met this criterion. The evidence in the record does not support this conclusion. We may deny an application or petition that does not comply with the technical requirements of the law even if the service center does not identify all of the grounds for

[3] In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

denial in the initial decision. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043; *see also Soltane*, 381 F.3d at 145-46.

The plain language of the criterion requires evidence of the beneficiary's authorship of scholarly articles, in the plural, in qualifying publications, in the plural, or major media. *See* 8 C.F.R. § 204.5(h)(3)(vi). This is consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act. As the petitioner only submits two articles, both articles must satisfy the plain language regulatory requirements for the beneficiary to meet this criterion.

The record includes evidence that the beneficiary authored ' ' published in The petitioner has not shown that the publication is a professional or a major trade publication or constitutes other major media. According to the cover of the publication, the publication is a newsletter for The record includes no other information about the publication. As such, the petitioner has not shown that is a qualifying publication.

The record also includes evidence that the beneficiary authored ' ' which was a paper "prepared for presentation at the held in Bra[z]il, The petitioner has not submitted evidence showing that the 9th International Congress of the constitutes a "professional or major trade publication[] or other major media," as required under the criterion. Rather, as its name suggests, the is an event or a conference, not a publication or major media. The paper bears no indicia that the conference published the article in the conference's published proceedings.

Accordingly, the petitioner has not presented evidence of the beneficiary's authorship of scholarly articles in the field, in professional or major trade publications or other major media. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vi).

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

The director concluded that the petitioner did not meet this criterion because it did not show that the beneficiary has performed a leading or critical role for organizations or establishments, in the plural, that have a distinguished reputation. While the record supports the director's ultimate conclusion relating to this criterion, it does not support the director's conclusion that the beneficiary's role in constitutes a leading or critical role for an employer that has a distinguished reputation. We may deny an application or petition that does not comply with the technical requirements of the law even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043; *see also Soltane*, 381 F.3d at 145-46.

First, the petitioner has not shown that constitutes an organization or establishment that has a distinguished reputation. According to Mr. the beneficiary "has played a crucial role in as the sole ' Even if the petitioner has shown that the beneficiary has performed a leading or critical role for it has not shown that has a distinguished reputation. According to an online printout from website, " is a world leader in natural gas, with a strategy focused on connecting competitively priced resources to specific, high-value markets." The evidence submitted to show reputation is from Such self-promotional evidence has minimal evidentiary value. *See Braga v. Poulos*, No. CV 06-5105 SJO 10 (C.D. Cal. July 6, 2007), *aff'd*, 2009 WL 604888 (9th Cir. Mar. 9, 2009) (concluding that we did not have to rely on the promotional assertions on the cover of a magazine as to the magazine's status as major media). The petitioner has not supported the promotional evidence with more independent evidence, such as, but not limited to, independent professional, trade or nationally circulated publications that discuss the reputation of

Second, the petitioner has not shown that it constitutes an organization or establishment that has a distinguished reputation. The petitioner has submitted evidence showing that the beneficiary, as its employee, has performed a critical role. According to Dr. the petitioner's Senior Vice President, Founding Partner and Chief Geoscientist, the beneficiary's "knowledge of the and interpretation of the dataset is critical to [the petitioner's] business" and the beneficiary "is the lead technical geophysicist for a small, integrated technical team focusing on the geoscience description of [the petitioner's] Irish assets and also on growing the [petitioner's] business with new exploration opportunities around the Dr. further provides that the beneficiary's "geophysical interpretation, mapping and vi[s]uali[z]ation skills and his recent co-ordination of a large 3D seismic program has been a key to [the petitioner's] success and will continue to be so, in a discipline where talented geophysicists with wide ranging of global exploration experience in a variety of countries are difficult to find."

Although the petitioner has shown that the beneficiary, as its employee, has performed a critical role, it has not shown that it is an organization or establishment that has a distinguished reputation. According to an online printout from its website, the petitioner was founded in and it "is a premier international oil and gas exploration and production company focused on the frontier." The record also includes other documents pertaining to the petitioner, including a These promotional documents have minimal evidentiary value. *See Braga*, No. CV 06-5105 SJO at 10.

The petitioner has submitted a November online printout from stating that the petitioner's shares increased 1.6 percent to close at $10.44. This online printout further provides that on September the petitioner joined the which is "a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labor, environment and anti-corruption." According to a November article, the petitioner "is trying to position itself as . . . a compassionate oil company" by leaving "a roughly $200,000-a-year program to provide clean drinking water" in The article also states that

in 2013, the petitioner "started publishing the oil revenue it paid to foreign governments." These documents are insufficient to show that the petitioner has a distinguished reputation. At best, the evidence shows that the petitioner is operating at a gain and has operated responsibly internationally.

In named the petitioner one of the top and ranked it number midsize companies. The petitioner has not provided information relating to the that shows its opinion of the top is accepted by the general or the relevant populations. The petitioner has also not provided sufficient evidence showing that being a desirable employer constitutes having a distinguished reputation, as required under the criterion.

On appeal, the petitioner submits a December article. As this article postdates the filing of the petition on August we will not afford it evidentiary value. It is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In other words, the petitioner cannot secure a priority date based on the anticipation of acquiring a distinguish reputation in the future. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977); *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.")

Accordingly, the petitioner has not presented evidence that the beneficiary has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(viii).

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

The director concluded that the petitioner did not meet this criterion. The petitioner asserts that it meets this criterion because the beneficiary's 2013 W-2 shows that his gross pay was $289,554.01. The petitioner has also provided an undated letter from the petitioner's Director, Human Resources, stating that the beneficiary, as a geophysicist, has an annual base salary of $210,000 and "has a cash plus equity first year compensation position of approximately $368,000." The petitioner has not met this criterion.

First, the petitioner has not provided sufficient evidence relating to what constitutes a high salary or other significant high remuneration for services in geophysics, a field in which the petitioner claims the beneficiary has extraordinary ability. The petitioner has submitted an August 2, 2013 online printout from indicating that in the Texas area, between July 2013 and June 2014, a level 4 wage for "Physicists," is $110,947 a year and the mean wage for an H-2B physicist is $93,891a year. The petitioner has also submitted an August 2, 2013 online printout from indicating that in the Texas area, between July 2013 and June 2014, the level 4 wage for "Geoscientists, Except Hydrologists and Geographers," is $172,141 a year and the mean wage for H-2B "Geoscientists, Except Hydrologists

and Geographers" is $137,738 a year. According to an online printout from [redacted] in 2012, the top 10 percent of "Geoscientists, Except Hydrologists and Geographers" in Texas and the United States earned at least $187,200 a year. According to an August 2, 2013 online printout from United States Bureau of Labor Statistics, in 2012, the top 10 percent of physicists earned more than $176,630, and the median annual wage for physicists in the oil and gas extraction industry was $160,960. According to an August 2, 2013 online printout from the Bureau of Labor Statistics, in 2012, the top 25 percent of "Geoscientists, Except Hydrologists and Geographers," earned more than $130,330, and the median annual wage for geoscientists in the oil and gas extraction field was $149,750. According to a December 3, 2013 online printout from the Bureau of Labor Statistics, in 2010, the top 10 percent of geoscientists earned more than $160,910, and the median annual wage for geoscientists in the oil and gas extraction field was $125,350.

The Bureau of Labor Statistics August 2, 2013 online printouts defined the employment position of "Physicists" as "Conduct research into physical phenomena, develop theories on the basis of observation and experiments, and devise methods to apply physical laws and theories. Excludes 'Biochemists and Biophysicists.'" The above definition for "Physicists" does not specifically include geophysicist, the beneficiary's position with the petitioner.

The Bureau of Labor Statistics December 3, 2013 printouts state that geoscientists include engineering geologists, geologists, geochemists, geophysicists, oceanographers, paleontologists, petroleum geologists and seismologists. Although the December 3, 2013 Bureau of Labor Statistics printouts indicate that the field of geoscience includes geophysics, the petitioner has not submitted sufficient evidence showing that earnings information for the larger field of geoscience, which includes many smaller fields as noted above, is the same or substantially similarly to the earnings information for the smaller field of geophysics. Furthermore, according to the December 2013 Bureau of Labor Statistics printouts, in 2010, only 19 percent of geoscientists worked in the oil and gas extraction field. According to the August 2, 2013 Bureau of Labor Statistics printouts, in 2012, only 18 percent of the physicists worked in the oil and gas extraction field. As such, these printouts are insufficient to establish what is high salary or other significantly high remuneration for services in geophysics, a field in which the petitioner claims the beneficiary has extraordinary ability.

Second, the "2013 North America Oil and Gas Exploration & Production (E&P) Compensation Survey" is insufficient to show that the petitioner meets this criterion. The petitioner has submitted an incomplete document, which does not indicate what percentage of individuals employed in the field of geophysics responded to the survey. Moreover, the document shows that according to the "Geophysical – Advanced Seniors" who responded to the survey, earnings at the 75th percentile is an actual total cash compensation of $255,453 in companies with more than $20 billion in assets, $253,502 in companies with more than $10 billion in assets, and $229,818 in companies with less than $10 billion in assets. The beneficiary's 2013 W-2 shows his gross pay was $289,554.01. This amount includes bonuses beyond the beneficiary's base salary. Comparing the beneficiary's total compensation package with the base salary of others in the field is not probative evidence under this criterion. Regardless, although the beneficiary's gross income places him within the 75th percentile

amongst the "Geophysical – Advanced Seniors" who responded to the survey, the petitioner has provided insufficient evidence showing that being within the 75th percentile constitutes "a high salary or other significantly high remuneration for services." Furthermore, the criterion requires a comparison of the beneficiary's earnings with "others in the field" of geophysics, not a comparison with only those who are employed as "Geophysical – Advanced Seniors."

Third, the "Annual Pay – Gross (£) – For All Employees Jobs: United Kingdom, 2011" is insufficient to show that the petitioner meets this criterion. This document does not provide earnings information specifically for individuals in the geophysics field. Rather, it includes earnings information for those in "Professional Occupations: science, research engineering and technology professionals," "Natural and social science professionals" and "Physical scientists." The petitioner has not shown that earnings information for these larger fields, which may or may not include geophysics, is the same or substantially similarly to the earnings information for the field of geophysics.

Accordingly, the petitioner has not presented evidence showing that the beneficiary has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ix).

C. Summary

We have considered all evidence in the record and conclude that the petitioner has failed to submit sufficient relevant, probative evidence to satisfy the regulatory requirement of three types of evidence.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated the beneficiary having: (1) a "level of expertise indicating that [he] is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that [he] has sustained national or international acclaim and that his [] achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While we conclude that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, we need not explain that conclusion in a

final merits determination.[4] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

[4] We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).